

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT MBALE**

**HCT-04-CV-CA-0032-2015
(ARISING FROM MISC. APPLICATION NO. 17 OF 2015 AND ORIGINAL CIVIL SUIT
NO. 053 OF 2014)**

WADAMBA DAVID	:~::~	APPELLANT
	VERSUS	
1. GODFREY MUTASA		
2. GIDAGUYI SOLOMON		
3. MIKA MUGOLI	:~::~	RESPONDENTS

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

Appellants were aggrieved and dissatisfied with the Ruling and orders of **Adong Molly** of 20th March 2015 under Misc. Application 017 of 2015 arising from Civil Suit 053/2014.

The grounds of appeal were that:

1. Learned trial Magistrate erred in law and fact when she held that the summons to file a defence was duly served upon applicant.
2. Learned trial Magistrate failed to properly evaluate the evidence and reached a wrong conclusion.
3. Learned trial Magistrate occasioned a miscarriage of justice.

The appellant argued all grounds above jointly.

The brief facts are that the appellant filed Civil Suit 053 of 2014 for vacant possession, permanent injunction, declaration of ownership of land styled as LRV 4477 Folio 21 Plot 607 and 608 Central Mbale Block 3 Namanyonyi Nkoma Mbale.

Summons were issued and the defendant was allegedly served but did not file a defence. The suit was therefore heard *ex parte*; and judgment entered against the appellant. Execution was conducted, where after the appellant filed an application Misc. Application No. 017 of 2015

seeking for setting aside the exparte judgment and other orders of court; on grounds that he was never served with court process. The application was dismissed on 20.3.2015 with costs. The appellant then filed this appeal.

It is the duty of this court as a first appellate court to re-evaluate the evidence and make its own conclusions.

The appellant in his supporting affidavit in the application in forming the basis of this appeal averred that the affidavit of service sworn by **Nashimolo Andrew** was false. He repeats the same complaint on appeal, and dwelt his submissions on appeal on the learned trial Magistrate's failure to find as such.

In response the Respondent's counsel argued that the service was proper.

Counsel for the Respondents referred to paragraphs 2, 3, 4, 5, 6 and 7 of the said affidavit of service deposed by **Nashimolo Andrew** to argue that the service was not faulty.

I have examined the record. The issue of contention is whether service was effectively done to warrant court's findings that the appellant's application had no merit.

Appellant referred to O.5 Rules 10 and 16 of the Civil Procedure Rules to argue that effective service is made on defendant personally and an affidavit of service made in proof thereof.

The appellant argued that the Process Server did not follow the procedure and hence sworn a false affidavit.

The record shows that the service was effected by the Process server, who claims he knew the defendant's home very well. There he met a lady, who gave him appellant's No. 0779-645968. He called him while in office of the LC.I Kinyoli Zone 'B' in presence of LC.I Chairman **Wangwale George**. The Chairman introduced appellant and the Process Server served him

where after he declined to sign but retained copies. (See paragraphs 6, 7, and 8). Copies of the documents in return of service are annexed.

According to O.5 r. 13 of the Civil Procedure Rules, service of summons must be personal, but where it is not possible to serve the defendant service can be done on his agent or adult member of his family. See: ***Betty Owaraga v. G.W. Owaraga HCCA No. 60 of 1992.***

Also in ***Erukana Kavumu v. Metha (1960) EA 305***, service was effected on an adult member of the family when defendant was reportedly in India. Court ruled that an inquiry was necessary regarding defendant's address before its concluded that he can't be found.

In this case the Process Server did depone that he obtained a telephone number, which he revealed as 0779645968, he called defendant and defendant came. He talked to him in presence of a chairman LC.I, who endorsed on the summons as proof of this encounter. These facts were deponed and remain good evidence unless controverted by contrary evidence. The law is that where defendant denies having been served, the onus is on him/her to prove to the satisfaction of court that the service was ineffective as per ***Busingye & Ors v. Williams Katotsire (2001-2005) HCB 108.***

The law also recognises the role of the local authorities to help in having the defendant understand the contents of the summons per ***Magela v. Kakungulu (1976) HCB 289.***

The Process Server in this case enlisted the support of the LC.I Chairman of the area, and also ensured that defendant is summoned to the LC's offices.

The appellant in the affidavit in support of his application did not contest the facts specifically above. He did not... the phone call, nor the fact of appearing before this chairman as alleged in the affidavit of service. He only mentions in paragraph 11 that he has never been served with summons. The rest of his averments relate to an attempt to show that he was wrongly sued since he has no interest in the suit land.

From the above facts there is no evidence on record upon which this court can base to fault the findings of the learned trial Magistrate. The Process Server satisfied the basic requirements for

ensuring proper service as listed in the *Uganda Civil Justice Bench Book (1st Edn 2016) page 25* that effective features of a valid affidavit of service should contain:

- A statement to the effect that the deponent is a Process Server of the Court.
- A statement to the effect that the defendant/Respondent was personally known to him or her at time of effecting service.
- A statement to the effect that the Defendant not being known to him or her, another person accompanied the Process Server and pointed out the person to be served.

The above check list was dully satisfied in the facts of the application before me. The Process Server conducted effective service. As argued by counsel to Respondents, there is no merit in this appeal. All grounds do fail.

The appeal is dismissed with costs to the Respondents. I so order.

Henry I. Kawesa

JUDGE

12.07.2017